IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2333 OF 1992

Arvind N. Mafatlal & anr. ..Petitioners.

Vs.

The Assistant Charity Commissioner & anr. .. Respondents.

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Mr. D.D. Madon with Mr. Cyrus Ardeshir and Ms. Ayesha Cooper i/b Gagrat & Co. for the Petitioners.

Ms. S.M. Dandekar for Responden No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

17th September, 2004.

P.C. :

This petition is directed against an order dated 25th November, 1991 passed by the Assistant Charity Commissioner, Bombay Region on an application under Section 41-A of the Bombay Public Trust Act, 1950.

The dispute in the present case relates to 393 equity shares held by a public trust, by the name of Mrs. Vijaylaxmi Navinchandra Mafatlal Trust No.16 in Mafatlal Industries Limited. The trust was

created by a deed of trust dated 12th March, 1974. The two Petitioners and the Second Respondent are the present trustees of the trust. On 18th January, 1990 a resolution was circulated to all the trustees for authorizing the sale of these 393 equity shares at the prevailing market price and for authorizing the First Petitioner to take necessary steps. The Second Respondent by a letter dated 13th February, 1990 opposed the sale. By another letter of the same date, the Second Respondent's husband opposed the sale stating that he would not advice the Second Respondent to sign the circular resolution as he had a right to pre-emption in respect of the shares. It has been stated that the shares were sold on 13th March, 1990 through M/s. V.A. Mahadevia & Sons under a contract note of the same date at a price of Rs.383.50 per share. The trustees addressed a letter to the Second Respondent enclosing 81 transfer forms with a request that these may be executed. The Second Respondent declined to do so. Subsequently, there was an exchange of correspondence between the parties, the trustees on their part requesting the Second Respondent to agree to transfer the shares and the

Second Respondent declining to do so. Padmanabh Arvind Mafatlal, who was one of the trustees died on 28th July, 1990. On 21st September, 1990 the petitioners moved the Assistant Charity Commissioner under Section 41-A for an order and direction commanding the Second Respondent to forthwith execute the transfer forms. In the meantime, on 20th September, 1991 the stock brokers addressed a communication recording that there was a concluded contract for sale and if share certificates together with valid transfer forms were not submitted within a fortnight, the shares would have to be procured from the open market at the cost and expense of the trustees. Eventually an order has been passed by the Assistant Charity Commissioner on 25th November, 1991 directing that the papers be filed. The Assistant Charity Commissioner has recorded the objection of the Second Respondent that the transaction was against the interest of the trust; that the reasons furnished by the trustees did not justify the disposal of the shares; there was no pressing emergency for the sale of the shares when the market price is low and that the financial position of the trust did not warrant the liquidation of the

aforesaid assets. According to the Second Respondent it was necessary to make enquiries in this behalf. The Assistant Charity Commissioner has held that it would be premature to issue directions unless enquiries were held and therefore, the papers be filed.

On behalf of the Petitioners, it has been submitted that ex facie, the order of the Assistant Charity Commissioner does not disclose any reasons in support of the final conclusition or an application of mind to the rival submissions. There is merit in the contention. The entire order would reflect that the Assistant Charity Commissioner has merely recorded the rival submissions. Even paragraph 41 of the order which purports to contain the operative order contains little more than the submission of the Second Respondent. In this view of the matter, it is but appropriate and proper that the First Respondent – the Assistant Charity Commissioner be directed to reconsider the application filed by the Petitioners afresh and to pass fresh orders thereon. It is needless

to add that having regard to the limited nature of the grievance which has been urged before this Court, this Court has had no occasion to consider either the maintainability of the application filed before the First Respondent or the merits of the application. In the circumstances, in order to facilitate the passing of a fresh order by the Assistant Charity Commissioner, the impugned order dated 25th November, 1991 is quashed and set aside. The proceedings shall stand restored to the file of the First Respondent. The First Respondent shall decide upon the application (Application No.3835 of 1990) afresh after giving an opportunity to all the concerned parties of being heard. The First Respondent is directed to do so within a period of six months from today. The parties will be at liberty to file such additional documents as they seek to file before the Assistant Charity Commissioner within a period of one week from today. The Petition is disposed of in these terms. No order as to costs.

Parties to act on an authenticated copy of this order issued by the office of this Court.